



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re Case No. 10-19222-A-11  
DC No. SEB-2  
AREIAS BROTHERS DAIRY, INC.,

Debtor.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
REGARDING THE FEE APPLICATION BY COUNSEL  
FOR THE CREDITORS' COMMITTEE**

On November 24, 2010, a hearing was held on the First Interim Fee Application of Blakeley & Blakeley LLP ("Blakeley"), as attorneys for the Official Committee of Unsecured Creditors (the "Committee"). The interim application seeks allowance and compensation of fees and expenses from August 27, 2010, through October 7, 2010, in the amount of \$60,050.50 (fees) and \$541.46 (expenses), for a total amount of \$60,591.96. An objection to the application was filed by John L. Areias, Jr., Patricia Areias, Richard M. Alves, and Mary Alves. Following the hearing, the court took the matter under submissions. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A).

1 This interim fee application is governed by Bankruptcy Code  
2 § 331. Section 331 allows professional persons employed under  
3 § 327 to apply to the court for compensation during the pendency  
4 of the case so that they do not have to wait for a final fee  
5 application to receive any payment. The limited purpose of § 331  
6 "is to provide financial relief to court-appointed officers  
7 engaged in protracted bankruptcy litigation, so that these  
8 officers do not have to wait for what may be years before  
9 receiving compensation." In re Strand, 375 F.3d 854, 858 (9<sup>th</sup>  
10 Cir. 2004). All awards of interim compensation are tentative and  
11 thus may be reviewed at the end of a case. Id.

12 "Interim awards are discretionary and interlocutory in  
13 nature, and as such are always subject to the court's  
14 reexamination and adjustment during the course of the case.  
15 Thus, while interim fee awards are generally governed by the  
16 same criteria which are used for making final awards, there  
17 is authority that an interim fee allowance can be made upon  
18 a determination of 'general reasonableness' or a 'surface  
19 determination of a reasonable fee,' rather than a strict  
20 determination of all reasonable fee factors necessary to be  
21 made in conjunction with a final fee award."

22 9 Am. Jur. 2d Bankruptcy § 271 (November 2010) (footnotes  
23 omitted).

24 The interim application seeks allowance of compensation for  
25 a six week period. During that six weeks, counsel for the  
26 Committee charged fees of \$60,050.50. Attorneys and paralegals  
27 at Blakeley spent 218.2 hours incurring those fees, and thus, the  
28 blended hourly rate was \$275.20 per hour. During this time,  
Blakeley was billing slightly over \$10,000 per week.

In the case, the debtor is represented by Walter & Wilhelm  
Law Group ("Walter & Wilhelm"). That firm has incurred fees as  
follows:

Date	Amount of Fees	Blended Hourly Rate
8/12 - 9/13	\$36,808.00	\$281.00
9/14 - 10/13	\$37,953.90	\$372.50
10/14 - 11/13	\$21,739.50	\$372.50
11/14 - 12/13	\$15,131.00	\$301.66

The debtor's counsel's first two fee applications encompassed August 12 through October 13, a total of nine weeks.

During that nine weeks, attorneys for the debtor incurred fees in the amount of \$74,761.90. This represents about \$8,306 a week.

Now, of course, neither the fees of Blakeley nor the fees of Walter & Wilhelm were evenly spread out through each week of their respective fee applications. Nonetheless, comparing their blended hourly rates and the amount of fees they each incurred during a roughly similar time period is instructive in determining the amount that should be awarded as interim compensation to Blakeley.

During a roughly similar time period, counsel for the Committee was incurring fees at a somewhat faster clip than was counsel for the debtor. The difference is almost \$2,000 per week. There is, however, little difference in the blended hourly rate between the two firms.

The court has also reviewed the narrative of services that is part of the fee application of Blakeley. In the narrative, Blakeley indicates that it spent \$10,944.50 in fees on the motions to use cash collateral and \$20,024.50 in fees on analysis of secured claims. Additionally, significant amounts were spent in asset analysis/recovery (\$5,234); asset disposition

1 (\$7,273.50); and case administration (\$8,055). Additionally,  
2 the court must take into consideration the fact that Committee's  
3 counsel was faced with quickly getting up to speed on a case with  
4 which it was totally unfamiliar. At the same time, Walter &  
5 Wilhelm had filed the chapter 11 case in the first place and  
6 began the case with some knowledge of the debtor's financial  
7 situation. Importantly, however, in this case during this time  
8 frame, the role of debtor's counsel was more proactive, filing  
9 and presenting numerous motions and negotiating with several key  
10 creditors. The role of Committee counsel was far more limited in  
11 that the Committee was generally responding to actions rather  
12 than initiating them.

13 Taking all of the above mitigating factors into account, it  
14 appears to the court that an allowance of fees as interim  
15 compensation in the full amount requested is not warranted. It  
16 may be that on a final fee application, the entire amount  
17 requested will be allowed. However, at this juncture of the  
18 case, given that counsel for the Committee incurred fees at a  
19 greater rate than did counsel for the debtor, while its role was  
20 inherently more limited, the court will allow the fees as interim  
21 compensation in the amount of \$40,000. The court will allow the  
22 entire amount of expense requested as interim compensation in the  
23 amount of \$541.46. Thus, the amount of interim compensation  
24 allowed under § 331 pursuant to this application is \$40,541.46.  
25 The court will issue a separate order in this regard.

26 DATED:

27 1/31/11

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WHITNEY RIMEL, Judge  
United States Bankruptcy Court